IN THE HIGH COURT OF DELHI

FAO No.414/2006

Smt. Anupama Malik & Anr. .....Appellants
! through: Mr. S.C.Singhal, Advocate

VERSUS

$ Smt. Sudershan Malhotra & Anr. ..... Respondent
^ through: Mr. Lalit Gupta, Advocate for R-1

% DATE OF DECISION: 15.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**(Oral)
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1. The facts lie within a fairly narrow compass though dispute appears to be gigantic. It is a usual story of the owners of the property selling different floors to different persons and everybody fighting for common space.

2. Sudarshan Malhotra owned property No.1/14 Ramesh Nagar, New Delhi. The property consists of a ground floor, a first floor and a second floor. A staircase leads up to the floor above from the ground floor and is covered by a mumty. Water tanks are installed on the mumty which serves

the entire building. Sudarshan Malhotra executed an agreement to sell, power of attorney and a will in favour of Anupama Malik and her husband Chander Mohan Malik pertaining to the second floor of the property. These are the usual documents being executed in Delhi to transfer rights in immovable property. Recital in the agreement to sell recorded that the staircase and the mumty would be common together with proportionate rights in the land.

3. The second floor has a terrace in front. To reach to the roof of the mumty an iron monkey staircase has been installed at the terrace in front of the second floor. Meaning thereby he who has to access the water tanks at the roof of the mumty has to come up to the staircase and through the door opening on to the terrace in front of the second floor has to enter the terrace and therefrom use the iron ladder to climb up to the monkey ladder to reach the roof of the mumty.

4. Dispute started when a gate was installed cutting access from the floors below to the second floor and the gate/door opening on to the terrace at the second floor came to be locked by the purchasers of the second floor. Sudarshan Malhotra retaliated by cancelling the agreement to sell, power of attorney etc.

5. A suit was filed by Sudarshan Malhotra praying,

amongst others, issuance of permanent injunction restraining Anupama Malik and her husband from affixing any locks on the doors marked 'A' and 'B' in the site plan filed along with the plaint. She claimed a mandatory injunction that the gates marked 'A' and 'B' should be permanently removed.

6. Considering an application under Order 39 Rule 1 and 2 CPC filed by Sudarshan Malhotra, and in view of the sale documents in favour of Anupama Malik and her husband, learned Trial Judge held that the staircase and the mumty and the right to go to the roof of the mumty was a common right and hence nobody could lock the gates marked 'A' and 'B'. A limited injunction has been issued in favour of Sudarshan Malhotra which reads as under:-

> "8. Accordingly the application of plaintiff under Order 39 Rules 1 & 2 read with Section 151 CPC is hereby allowed and defendants are restrained from locking the gates A and B situated on the second floor of property bearing No.1/14, Ramesh Nagar, New Delhi without providing plaintiff the duplicate keys of the locks of the said doors and also not to change the locks of the said gates without her consent during the pendency of the suit."

7. In view of the title documents relied upon by the respective parties and in view of the admitted position that the staircase and the mumty is expressly stated to be common areas for use by all occupants of the building as also the fact

that water tanks are installed on the roof of the mumty and access to the water tanks has to be through the terrace in front of the second floor, (even easementry rights flow in favour of Sudarshan Malhotra) the impugned order cannot be faulted.

8. I find no merits in the appeal.

9. The appeal is dismissed.

November 15, 2007 **PRADEEP NANDRAJOG, J.**
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